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BARBARA SHAWCROFT,

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Plaintiff,

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v.

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ROUNDPOINT MORTGAGE
SERVICING CORPORATION, a
Florida Corporation; QUALITY LOAN
SERVICE CORPORATION, a
California Corporation; and Does 1
through 10, inclusive,

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Defendants.

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Through the present lawsuit, Plaintiff Barbara Shawcroft ("Plaintiff") seeks to enjoin her mortgage servicer, Defendant Roundpoint Mortgage Servicing Corporation ("Roundpoint") from selling Plaintiff's home, located at 2302 Bucklebury Drive in Davis, California, at a Trustee's sale occasioned by her alleged failure to keep mortgage payments current.¹ In addition to injunctive relief, Plaintiff also seeks a declaratory judgment to ascertain the propriety of Roundpoint's accounting for the mortgage

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¹ While Plaintiff has also sued the mortgage trustee, Quality Loan Service Corporation, Quality subsequently filed a Declaration of Non-Monetary Status and the lack of any objection to that Statement has rendered Quality only a nominal party to these proceedings.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. 2:15-cv-00698-MCE-KJN

MEMORANDUM AND ORDER

1 payments made by Plaintiff and whether its shortcomings in that regard violated
2 California law.

3 Plaintiff's lawsuit was commenced in Yolo County Superior Court but was
4 subsequently removed here on diversity grounds. Presently before the Court is
5 Roundpoint's Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6)² for
6 failure to state a viable claim. Alternatively, Roundpoint requests a more definite
7 statement in accordance with Rule 12(e). Finally, in the event the Court declines to
8 dismiss Plaintiff's claim in its entirety, Roundpoint also requests that certain portions of
9 the Complaint pertaining to attorney's fees be stricken under Rule 12(f).

10 For the reasons set forth below, Roundpoint's Motion to Dismiss is DENIED in its
11 entirety, including its alternative requests to strike³ and for a more definite statement.³

13 BACKGROUND

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15 On or about February 14, 2003, Plaintiff obtained a \$292,000 mortgage loan for
16 her home from Guaranty Residential Lending, Inc. Roundpoint currently services the
17 loan.

18 On February 8, 2013, Plaintiff filed for Chapter 13 bankruptcy protection. On
19 September 20, 2013, she filed a Chapter 13 Plan in her bankruptcy proceedings which
20 reported arrearages to Roundpoint in the total sum of \$21,011.52. According to the
21 terms of that proposed plan, Plaintiff would continue to pay monthly loan payments to
22 Roundpoint in the amount of \$1,768.07, plus an additional monthly payment of \$350.20,
23 which would be applied to the existing arrearage.

24 Plaintiff's proposed Chapter 13 plan was never approved, although the Trustee's
25 Final Report and Account reflect that Plaintiff paid some \$31,804.74 to Roundpoint prior

26 ² All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless
27 otherwise noted.

28 ³ Having determined that oral argument would not be of material assistance, the Court ordered this
Motion submitted on the briefing in accordance with Local Rule 230(g).

1 to the time her bankruptcy case was dismissed on September 16, 2014, for failure to
2 make required Plan payments. According to Roundpoint, Plaintiff did nothing to cure her
3 longstanding mortgage deficit following dismissal of the bankruptcy proceeding, and in
4 fact increased arrearages on the property by failing to make required loan payments
5 from August 2014 to October 2014. This prompted the trustee, Quality, to record a
6 notice of Trustee's Sale on October 13, 2014.

7 Plaintiff, on the other hand, claims that all required mortgage payments were
8 made by the bankruptcy trustee during the period between March 2013 and August of
9 2014. According to Plaintiff's Complaint, she received no monthly statement, payment
10 notices or other invoices from Roundpoint regarding her mortgage after September
11 2014. Compl, 14-15. Plaintiff avers that because Roundpoint repeatedly refused to
12 provide a deficiency balance, she was prevented from bringing the account current and
13 could not make payments in the interim. Then, on January 22, 2015, Plaintiff claims that
14 Roundpoint advised her counsel for the first time that the deficiency figure was
15 \$28,538.59, an amount she disputes. Given Roundpoint's refusal to withdraw the
16 Trustee's Sale, which had been rescheduled for February 5, 2015, Plaintiff filed her
17 Verified Complaint for Declaratory and Injunctive Relief and Damages in the Yolo County
18 Superior Court on January 29, 2015. The state court subsequently issued a Temporary
19 Restraining Order ("TRO") enjoining the sale on February 3, 2015.

20 Plaintiff's Complaint asserts that Defendants violated the California Homeowner
21 Bill of Rights, California Civil Code § 2920, et seq. ("Homeowner Bill") by not ensuring
22 that notices given prior to a trustee's sale were accurate and supported by competent
23 and reliable evidence, as required by California Civil Code § 2924.17(a). Plaintiff further
24 claims a violation of § 2924.17(b) on grounds that the mortgage servicer, here,
25 Roundpoint, did not review evidence that substantiated Plaintiff's default, including her
26 loan status and loan information. In her Second Cause of Action, she alleges that
27 § 2924.19 requires that a pending trustee's sale be enjoined until such time as the

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1 mortgage servicer, here Roundpoint, has demonstrated that the underlying violations of
2 §2924.17 have been remedied.

3 In addition to alleging claims under the Homeowner Bill, Plaintiff also claims in her
4 First Cause of Action that she is entitled to declaratory relief as to her rights under
5 California Civil Code § 1060. As a factual predicate to that claim, she cites the
6 controversy as to whether payments she has made to Roundpoint have been properly
7 credited so as to properly support a Notice of Default.

8 In the wake of the state court's TRO, a motion for preliminary injunction was
9 scheduled for February 4, 2015, but that hearing was continued by stipulation to
10 March 17, 2015. That hearing was again continued until June 16, 2015, in the interest of
11 discussing informal resolution, with the parties agreeing that the TRO remain in effect
12 until that time. Despite what Plaintiff characterizes as continuing settlement discussions,
13 on March 27, 2015, Roundpoint removed the action to this Court on grounds that
14 because the remaining defendant, Quality, had been deemed a nominal party, its
15 citizenship could be disregarded for diversity purposes. Roundpoint subsequently filed
16 the instant Motion to Dismiss on April 3, 2015.

17 18 **STANDARD**

19 20 **A. Motion to Dismiss for Failure to State a Viable Claim**

21 On a motion to dismiss for failure to state a claim under Federal Rule of Civil
22 Procedure 12(b)(6), all allegations of material fact must be accepted as true and
23 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.
24 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) "requires only 'a short and plain
25 statement of the claim showing that the pleader is entitled to relief' in order to 'give the
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell
27 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,
28 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require

1 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of
2 his entitlement to relief requires more than labels and conclusions, and a formulaic
3 recitation of the elements of a cause of action will not do.” Id. (internal citations and
4 quotations omitted). A court is not required to accept as true a “legal conclusion
5 couched as a factual allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
6 Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right to relief
7 above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright &
8 Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the
9 pleading must contain something more than “a statement of facts that merely creates a
10 suspicion [of] a legally cognizable right of action”)).

11 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket
12 assertion, of entitlement to relief.” Id. at 555 n.3 (internal citations and quotations
13 omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard to see how
14 a claimant could satisfy the requirements of providing not only ‘fair notice’ of the nature
15 of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing Wright & Miller,
16 supra, at 94, 95). A pleading must contain “only enough facts to state a claim to relief
17 that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have not nudged their claims
18 across the line from conceivable to plausible, their complaint must be dismissed.” Id.
19 However, “[a] well-pleaded complaint may proceed even if it strikes a savvy judge that
20 actual proof of those facts is improbable, and ‘that a recovery is very remote and
21 unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

22 A court granting a motion to dismiss a complaint must then decide whether to
23 grant leave to amend. Leave to amend should be “freely given” where there is no
24 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice
25 to the opposing party by virtue of allowance of the amendment, [or] futility of the
26 amendment” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
27 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to
28 be considered when deciding whether to grant leave to amend). Not all of these factors

1 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .
2 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,
3 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that
4 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,
5 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,
6 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.
7 1989) (“Leave need not be granted where the amendment of the complaint . . .
8 constitutes an exercise in futility . . .”)).

9 **B. Motion for More Definite Statement**

10 A motion for more definite statement pursuant to Rule 12(e) attacks “the
11 unintelligibility of the complaint, not simply the mere lack of detail . . .” Neveau v. City
12 of Fresno, 392 F. Supp. 2d 1159, 1169 (E.D.Cal. 2005). Courts will deny the motion if
13 the complaint is specific enough to give notice to the defendants of the substance of the
14 claim asserted. Id. A Rule 12(e) motion should be granted only if the complaint is “so
15 vague or ambiguous that the opposing party cannot respond, even with a simple denial,
16 in good faith or without prejudice to himself.” Cellars v. Pac. Coast Packaging, Inc.,
17 189 F.R.D. 575, 578 (N.D. Cal. 1999); see also Bautista v. L.A. Cnty., 216 F.3d 837, 843
18 n.1 (9th Cir. 2000) (Reinhardt, J., concurring) (party can move for more definite
19 statement on those rare occasions where a complaint is so vague or ambiguous that
20 party cannot reasonably frame a responsive pleading).

21 “Rule 12(e) is designed to strike an unintelligibility rather than want of detail.... A
22 motion for a more definite statement should not be used to test an opponent's case by
23 requiring him to allege certain facts or retreat from his allegations.” Neveu, 392 F. Supp.
24 2d at 1169 (quoting Palm Springs Med. Clinic, Inc. v. Desert Hosp., 628 F. Supp. 454,
25 464-65 (C.D. Cal. 1986). If the facts sought by a motion for a more definite statement
26 are obtainable by discovery, the motion should be denied. See McHenry v. Renne,
27 84 F.3d 1172, 1176 (9th Cir. 1996); Neveau, 392 F. Supp. 2d at 1169-70; Sagan v.
28 Apple Computer, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). “This liberal standard of

1 pleading is consistent with [Rule] 8(a)(2) which allows pleadings that contain a ‘short and
2 plain statement of the claim.’ Both rules assume that the parties will familiarize
3 themselves with the claims and ultimate facts through the discovery process.” Neveu,
4 392 F. Supp. 2d at 1169 (citing Sagan, 874 F. Supp. at 1077 (“Motions for a more
5 definite statement are viewed with disfavor and are rarely granted because of the
6 minimal pleading requirements of the Federal Rules.”)).

7 **C. Motion to Strike**

8 The Court may strike “from any pleading any insufficient defense or any
9 redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f)
10 (emphasis added). “[T]he function of a 12(f) motion to strike is to avoid the expenditure
11 of time and money that must arise from litigating spurious issues by dispensing with
12 those issues prior to trial...” Sidney-Vinsein v. A.H. Robins Co., 697 F.2d 880, 885 (9th
13 Cir. 1983).

14 **ANALYSIS**

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16
17 Roundpoint first argues that Plaintiff’s Complaint fails to state viable claims
18 because it seeks declaratory and injunctive relief without premising those remedies on
19 an independently viable cause of action. While Plaintiff points out that both an injunction
20 and declaratory relief are contemplated as remedies for violations of the California’s
21 Homeowner Bill, Roundpoint claims that Plaintiff’s own admissions, coupled with
22 judicially noticeable bankruptcy documents, show that Plaintiff failed to make required
23 payments in accordance with her Chapter 13 Plan, and that Plaintiff persisted in failing to
24 cure her default status after bankruptcy proceedings were concluded. Accordingly, in
25 Roundpoint’s view, Plaintiff cannot state an independently viable claim under the
26 Homeowner Bill upon which to base the equitable relief she now requests.

27 In this Court’s estimation, Roundpoint overstates its case, particularly for
28 purposes of a motion to dismiss, under which the allegations of Plaintiff’s complaint must

1 be presumed true. California Civil Code § 2419(a) unquestionably authorizes injunctive
2 relief for violations of the Homeowner Bill, and California Code of Civil Procedure
3 similarly authorizes a declaratory relief action to ascertain the rights and duties
4 encompassed within a written instrument. Roundpoint in essence argues that there
5 cannot be any dispute under either statutory scheme because Plaintiff's mortgage and
6 bankruptcy documents indicate otherwise.

7 While the Court can and will take judicial notice of the existence of documents
8 purporting to identify the scope of Plaintiff's indebtedness, that does not necessarily
9 correlate with a conclusion that the numbers contained in those documents are accurate.
10 Plaintiff's Complaint alleges that the arrearage claimed by Roundpoint in the amount of
11 more than \$28,000 is "plainly erroneous" since she made all required mortgage
12 payments between March 2013 and August 2014. She also makes clear that
13 Roundpoint refused to provide her monthly statements of payment notices beginning in
14 September 2014 so that she could bring her account current. Compl., ¶¶ 14-16. For
15 purposes of a motion to dismiss, those allegations must be accepted as true and
16 construed in Plaintiff's favor. See Livid Holdings Ltd. v. Solomon Smith Barney, Inc.,
17 417 F.3d 940, 946 (9th Cir. 2005). Moreover, while Plaintiff's bankruptcy attorney
18 calculated the amount of Plaintiff's arrears at \$21,011.52 at the time he submitted a
19 Chapter 13 Plan on Plaintiff's behalf in February of 2013, that Plan was never confirmed
20 and Plaintiff disputes its accuracy.

21 According to the initial Notice of Default filed on June 1, 2012, Plaintiff's past due
22 payments, plus costs and expenses, totaled only \$9,293.38 as of May 30, 2012. Def.'s
23 Request For Judicial Notice ("RJN"), Ex. 4. As of September 2013, when Plaintiff's
24 Chapter 13 Plan was submitted, that amount had allegedly more than doubled to more
25 than \$21,000. Id. at Ex. 6. Unless Plaintiff had made virtually no payments in the
26 intervening period, a scenario she specifically denies in her Complaint, an increase of
27 that magnitude would appear improbable. Moreover, if we look to the amount of
28 payments made by the Trustee as of November 18, 2014, a total of some \$31,804.74

1 was allegedly made to Roundpoint during a period that presumably would have started
2 after the Chapter 13 Plan was submitted on September 20, 2013. Id. at Ex. 9. That
3 approximate 14-month period would yield an average monthly payment of nearly \$2,300,
4 a figure in excess of the \$2,118.27 monthly payment to Roundpoint called for by the
5 Plan. The facts are further clouded by what appears to have been erratic payments on
6 Plaintiff's part, including a lump sum payment of \$18,390 apparently made by Plaintiff on
7 July 24, 2014. Id. at Ex. 8.

8 While the Court is fully mindful that these discrepancies may well be clarified
9 through further evidence, it simply cannot make a determination at the pleadings stage
10 that all of Roundpoint's figures are necessarily accurate. Given Plaintiff's claim at this
11 juncture that she made the required payments and that Roundpoint refused to provide a
12 proper accounting of those payments, Plaintiff's Complaint survives a pleading challenge
13 at this time.

14 Roundpoint's second argument, that Plaintiff lacks standing to assert any claim
15 because of her failure to allege a tender in the amount of the secured indebtedness, is
16 equally problematic. As indicated above, Roundpoint's alleged refusal to tell Plaintiff
17 what she owed, and to provide a proper accounting, figures prominently in her
18 complaint. Although Roundpoint cites authority for the proposition that tender of what a
19 homeowner owes is necessary in order to maintain any cause of action for irregularity in
20 the sale procedure (See Abdallah v. United Sav. Bank, 43 Cal. App. 4th 1101, 1109
21 (1996)), Plaintiff alleges that Roundpoint's failure to provide an accurate accounting
22 prevents her from making any such tender. As Plaintiff states in her Complaint:

23 Plaintiff is ready, willing, and able to pay the correct amount
24 to bring her account current and avoid the trustee's sale, but
25 has been prevented from doing so by Defendants' incorrect
information, lack of responsiveness, and failure to provide a
proper accounting.

26 Compl., ¶ 22.

27 At this juncture, Plaintiff's offer of tender as evinced in her Complaint, as well as
28 the unresolved question of to what extent she remains indebted to Roundpoint, is

1 enough to satisfy any tender requirement. A conclusion otherwise would require Plaintiff
2 to pay an amount she expressly argues is “plainly erroneous,” and would largely defeat
3 the very purpose of her lawsuit.

4 The third and final argument advanced by Roundpoint in its motion is no more
5 persuasive. Arguing that each party is required to bear its own attorneys’ fees unless a
6 statute or other agreements between the parties provides otherwise, Roundpoint asks
7 the Court to strike Plaintiff’s fee request on grounds that she has identified no such
8 source. Roundpoint fails to recognize, however, that Paragraph 31 of the Complaint
9 (one of the two portions it seeks to strike, the other being the concluding prayer
10 requesting fees) specifically cites to provisions of California’s Homeowner Bill which
11 authorizes a prevailing borrower reasonable attorney’s fees and costs in an action
12 brought under that statutory scheme. See Cal. Civ. Code § 2924.19(h). That argument
13 is thus rejected.

14
15 **CONCLUSION**

16
17 For the reasons set forth above, Defendant’s Motion to Dismiss (ECF No. 3),
18 which alternatively requests a more definite statement and/or an order striking certain of
19 Plaintiff’s allegations as set forth in her Complaint, is DENIED in its entirety.

20 IT IS SO ORDERED.

21 Dated: November 20, 2015

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24 _____
25 MORRISON C. ENGLAND, JR., CHIEF JUDGE
26 UNITED STATES DISTRICT COURT
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